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Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples

Gibraltar

Working paper prepared by the Secretariat

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I. General

1. Gibraltar[1] is a narrow peninsula extending southward from the south-west coast of Spain, to which it is connected by an isthmus about 1.6 kilometres long. The Spanish port of Algeciras lies 8 kilometres across the bay to the west; the continent of Africa is situated 32 kilometres across the Strait of Gibraltar to the south. According to the United Kingdom of Great Britain and Northern Ireland, the area of Gibraltar is 5.86 square kilometres, and according to Spain it is 4.8 square kilometres.

2. According to the latest census of Gibraltar, taken on 14 October 1991, Gibraltar's civilian population in 1991 was 28,074, consisting of 20,022 Gibraltarians, 5,182 other British subjects, including families of British servicemen stationed in Gibraltar, but excluding servicemen, and 2,870 aliens.

II. Political developments

A. General

3. Detailed information on the Territory's Constitution and Government, public service and other related developments is contained in the 1994 working paper prepared by the Secretariat (A/AC.109/1195).

B. General elections

4. It will be recalled that the last general elections were held in Gibraltar on 16 May 1996. According to the administering Power, 88 per cent of the registered voters participated in the elections. The results were as follows: the Gibraltar Social Democratic Party, 52.2 per cent; the Gibraltar Socialist Labour Party, 43.0 per cent; and the Gibraltar National Party, 4.7 per cent. Consequently, the Gibraltar Social Democratic Party won eight seats in the Territorial Legislative Assembly and the Gibraltar Socialist Labour Party obtained seven seats. Mr. Peter Caruana, the Gibraltar Social Democratic Party leader, obtained 8,561 votes and was appointed Chief Minister of Gibraltar.

C. Recent developments

5. The following information on the Gibraltar garrison review was issued by the administering Power on 17 April 1997:

"The Commander of British Forces, Major General Simon Pack, today announced that 500 previously planned reductions in posts would not now go ahead.

"The findings of the Review of the Gibraltar Garrison announced in July 1994, indicated that the locally employed civilian workforce would need to be halved, to 700, by the turn of the century and that 350 posts of the remaining workforce would be subject to 'competing for quality'.

"Subsequent developments, and a decision to retain certain functions in house, mean that a greater number of locally employed civilian posts will now be required: 1,000 by the turn of the century. Only 300 further reductions are therefore required as 100 posts have already gone through natural wastage. The Commander of British Forces, in announcing this good news, commented that the long lead time for the reductions should enable most of the job losses to be achieved through natural wastage and voluntary early retirement or voluntary redundancy.

"The Commander of British Force is also pleased to announce that the Ministry of Defence will shortly be discussing an improved early retirement package with the trades unions to cover the period of draw-down. This should increase further the attractiveness of the option of early retirement for staff over 50.

"Close cooperation continues with the Government of Gibraltar and the trade unions on these encouraging developments."

III. Economic conditions

A. General

6. Gibraltar has no known natural resources and lacks agricultural land. The industries, trades and services in the Territory are involved mainly in supplying the needs of its population and of the large number of visitors to the Territory. The economy of Gibraltar is largely dependent on tourism and the provision of financial services such as banking, insurance, shipping and portfolio management.

7. According to the administering Power, in 1993/94 the Territory's per capita gross domestic product (GDP) and gross national product (GNP) were estimated at £10,881 and £11,331 respectively.

B. Public finance

8. The report of the administering Power indicates that in 1995/96, revenue totalled £71.9 million and expenditure amounted to £53.1 million, compared with £68.5 million and £50.4 million respectively in 1994/95.

9. As of 31 March 1996, the public debt of Gibraltar stood at £64.9 million, compared with £99.3 million as at 31 March 1995.

10. Income tax is charged on income arising in, derived from or received in Gibraltar. Dividends, interest, pension and emoluments of office accruing in, derived from or received in any place outside Gibraltar by an individual ordinarily resident in Gibraltar are also chargeable. The rates applicable to individual residents in Gibraltar range from 20 per cent on the first £1,500 of taxable income to 50 per cent after the first £19,500.

C. Trade

11. In 1996, the total amounts of imports and exports were £500 million and £200 million, respectively. Over one third of Gibraltar's non-fuel imports originate from the United Kingdom. Other sources of imports include the Netherlands, Japan and Spain. Exports of goods of local origin are negligible. Exports consist mainly of re-exports of petroleum and petroleum products supplied to shipping.

D. Banking and finance

12. In 1996, there were 26 banks authorized to conduct banking business in Gibraltar.

13. The number of companies registered under the Companies (Taxation and Concession) Ordinance dropped from 13,171, as of 31 December 1994, to approximately 8,000 as of 31 December 1995. Companies registered under the Ordinance are exempted from the payment of income tax. The exemption covers dividends, interest, directors' fees and annual payments made to non-residents. Shares and debentures held in an exempt company are not liable to estate duty. Any company operating under the Ordinance must not carry on trade or business in Gibraltar and no Gibraltarian or resident of Gibraltar must have any beneficial interest in the company's shares.

E. Transportation, communications and utilities

14. The total mileage of roads in the Territory is 26.75 miles. The roads are reported to be in good condition and suitable for vehicular traffic. Five bus routes serviced by 17 buses maintain communication in the Territory. The total number of vehicles registered as at 31 December 1996 was 27,147.

15. In 1996, a total of 67,000 persons arrived in the Territory by air and 134,000 by sea.

16. Air mail is dispatched to London and via London to all destinations worldwide, six times a week in direct flights. Surface mail to and from the United Kingdom is received and dispatched five times a week. In 1996, eight commemorative sets of stamps were issued in the Territory.

17. The telephone system is operated by Gibraltar NYNEX Communication, Ltd., a joint United States/Gibraltar company. In 1996, the total number of telephones was 21,466, compared with 20,574 in 1995. Voice mail services were introduced in Gibraltar in August 1994.

18. The Electricity Department is responsible for the supply of electricity in the Territory. During 1996, the maximum electricity demand was 21,900 kilowatts, and a total of 110,401,977 kilowatt-hours were generated.

F. Tourism

19. In 1995, tourist arrivals totalled 5.5 million, compared with 4.2 million in 1994. During 1995, the hotel arrivals increased by 21 per cent compared with 1994.

IV. Social and educational conditions

A. Labour

20. In 1996, the total number of employees in Gibraltar was 13,000 and the number of unemployed was 1,800; these figures compare with 12,702 and 352 respectively in 1995.

21. In 1995, average weekly earnings in the Territory amounted to £233.32, compared with £220.78 in 1994.

22. Legislation regulating labour and employment conditions in the Territory is reported to be in line with European Union (EU) directives. The Trade Unions and Trade Disputes Ordinance of Gibraltar contains provisions for registration and systems of organization of the unions in

Gibraltar that are similar to those in the United Kingdom. As of December 1995, there were 20 trade unions registered in the Territory.

B. Human rights and the status of women

23. The Gibraltar (Constitution) Order of 1969 guarantees the protection of the fundamental rights and freedoms of the individual and the maintenance of a Supreme Court with unlimited jurisdiction to hear and determine any civil or criminal proceedings under any law and with such jurisdiction and powers as are conferred upon it by the Constitution of Gibraltar or any other law.

24. The courts of law of the Territory consist of a Court of First Instance, a Magistrates' Court, a Court of Appeal and a Supreme Court. The substantive law of the Territory is contained in Orders in Council and enactments of the Parliament of the United Kingdom that apply to Gibraltar, as well as in locally enacted ordinances, subsidiary legislation, the common law and the rules of equity in force in the United Kingdom, so far as they are applicable to the Territory.

25. The status of women in Gibraltar, whether married or single, and with or without family responsibilities, is similar to that enjoyed by women in the United Kingdom. The Social Security (Insurance) Ordinance of Gibraltar provides for the payment of a variety of benefits and allowances to expectant mothers and widows.

C. Environment

26. The Convention on International Trade in Endangered Species of Wild Fauna and Flora, signed in Washington in 1973, has been extended to apply to Gibraltar as a dependent Territory for which the United Kingdom, a signatory to the Convention, has responsibility. The Endangered Species (Imports and Exports) Ordinance of 1976 gave effect in the Territory to the provisions of the Washington Convention. The Animal and Birds Ordinance protects fauna in the Territory and the Heritage Trust Ordinance provides for the protection of sites of natural beauty and scientific interest.

27. According to the official Spanish sources, the Minister for Public Works, Transport and Environment of Spain, in his statements to the Congress of Deputies of Spain, raised several issues relating to Gibraltar. He, *inter alia*, referred to his preoccupation with the solid waste pollution of the Bay of Algeciras, resulting from Gibraltar; pollution of the Bay of Algeciras and Bahia as a result of ships refuelling at anchorage practised in Gibraltar; air pollution originating from the functioning of the Gibraltar waste incinerator; and environmental damage from the land reclamation programme in the Territory.

28. According to the administering Power, the United Kingdom and Gibraltar Governments are fully committed to the implementation in Gibraltar of any European Union (EU) environmental legislation that applies to the Territory and to the implementation of any obligations arising under international environmental law which are binding in Gibraltar. The administering Power also states that there is no evidence of an environmental or ecological "disaster" in the Bay of Algeciras resulting from any activity or neglect by Gibraltar. Gibraltar is the only Mediterranean territory to give strong environmental protection to all of its territorial waters (the 1991 Nature Protection Ordinance). Refuelling at anchorage, which has occurred in Gibraltar waters for many years, is a common worldwide practice. It is, for example, carried out in the Bay of Gibraltar by Spanish bunkering vessels based in Algeciras as well as vessels based in Gibraltar. Neither the Gibraltarian nor the Spanish authorities were able to trace the source of the oil spill. Gibraltar's waste incinerator was built and installed in 1992 by a Danish company. It conforms to EU norms. The Gibraltar Transport and General Workers' Union made no complaints about the incinerator. The incinerator generates electricity for desalinating water. It currently operates below capacity and the electricity generated is more expensive than if a larger volume of waste were burned. Quite apart from Gibraltar's environment protection policy, there is therefore a strong economic incentive for Gibraltar not to dump waste into the sea. The reclaimed land area in Gibraltar was constructed using rock imported from Spain, and the landfill of sand was not removed from local beaches. The extensive areas of the rare sea grass *posodonia* (protected by the EU Habitats Directive) is one indication of the health of Gibraltar's waters. The United Kingdom stands ready to discuss with Spain and Gibraltar how local cooperation can be enhanced in the notification and treatment of pollution incidents in the Bay of Gibraltar.

D. Housing

29. During the period under review, overcrowding continued to be a serious social problem in Gibraltar.

30. The Government continues to pursue a policy of increased home ownership both to alleviate the housing shortage and to reduce the burden of increasing repair and maintenance costs for its rented accommodation. During the

years 1985-1994, the level of home ownership in Gibraltar increased from 6 per cent to 25 per cent.

31. An improvement in the availability of housing was achieved as a result of the release by the Ministry of Defence of married quarters for public residential use. Over 100 residential units became available for civilian occupation.

32. As of the end of 1995, the government housing waiting list contained 568 applicants, compared with 303 as at the end of 1994.

E. Social welfare and assistance

33. The Social Security (Employment Injuries Insurance Ordinance) provides for payment of injury benefits, disablement benefit and industrial accident death benefit. In addition, free medical treatment for employment injuries and occupational diseases is provided at government hospitals.

34. The Social Security (Non-Contributory Benefits and Unemployment Insurance) Ordinance covers entitlement and payment of unemployment benefits to unemployed persons previously in employment. Payment of such benefits is financed from the weekly contributions by employers and employees to the Social Insurance (Short-Term Benefit) Fund. The standard weekly rate of unemployment benefits is £37.20 with an increase of £18.30 a week for any one dependent adult. During 1995, 609 claims for unemployment benefits were processed and 609 requests were granted.

35. The social assistance arrangements provide for a case-by-case discretionary consideration of individual need. The basic weekly rates are as follows: single person £29.10-£38.30; and married couple, £50.20-£56.30. Higher rates are paid to registered blind persons. Persons in receipt of social assistance may apply for rent relief.

36. The institutional care of the aged is undertaken by the John Mackintosh Homes, financed by a charitable trust with an annual subvention from the Government. As of the end of 1995, the Homes catered for a total of 110 persons, compared with 95 in 1995.

F. Public health

37. The Gibraltar Health Authority is responsible for providing health care in the Territory. The Authority operates a group practice medical contributory scheme and gives registered persons access to free medical treatment.

38. St. Bernard's Hospital, with a total of 103 beds, provides comprehensive out-patient services and in-patient treatment for acute medical and surgical cases. It also has a maternity section and two wards for elderly patients. The King George V Psychiatric Unit has 60 beds and provides diverse types of psychiatric treatment, including in- and out-patient services. The territorial Health Centre provides general practice medical services, including domiciliary visits.

39. A programme of visits by consultants from the United Kingdom covers specialties such as pediatric neurology, cardio-thoracic surgery and plastic surgery.

40. As of 1996, the territorial medical and health staff included the following: registered physicians, 34; nurses of senior training, 118; partially trained nurses, 204; midwives of senior training, 10; environmental health officers, 9; laboratory and X-ray technicians, 17; pharmacists, 1; and others, 87.

41. During 1995/96, total public health expenditure amounted to £20.67 million, compared with £19.9 million in 1994/95.

G. Public education

42. The Education Department continues to be in charge of public education in Gibraltar. In 1994/95 the expenditure on education totalled £11 million, compared with £10.9 million in 1994/95.

43. As of December 1996, 4,677 students were enrolled in government schools. Education is free and compulsory for all children between the ages of 5 and 15. There are 12 government primary schools, 1 private school, 1 services school and 2 secondary schools. There is also one special school that caters for 19 children with a variety of special needs.

H. Crime and crime prevention

44. The report of the administering Power concludes that the activities of Gibraltar-based fast boats and rigid inflatables have been effectively eliminated and that illicit trafficking involving Gibraltar is no longer a problem. The United Kingdom and the Gibraltar Governments are ready to cooperate with the Spanish authorities on this issue in the common regional interest.

45. The administering Power also indicates that on 5 July 1995, the Government of Gibraltar introduced the Imports and Exports (Control) Regulations prohibiting the

importation of semi-rigid inflatable vessels in Gibraltar. On the same day, regulations were also introduced under the Port Ordinance imposing new controls on the mooring of all types of small vessels. Consequently, all of the 55 rigid inflatable vessels berthed in Gibraltar were seized by the Royal Gibraltar Police and all but one have been confiscated or exported and prohibited re-entry. Of the 112 Phantom-type speed boats in Gibraltar in July 1995 only 48 remain. The Government of Gibraltar will shortly present new legislation outlawing all remaining fast boats capable of more than 30 knots in order to ensure that there be no recurrence of activity by Gibraltar-based fast boats and inflatables.

46. To deal with tobacco smuggling, on 26 July 1995, the Gibraltar Government introduced measures on applying a quota system to the distribution of American brands of cigarettes within the domestic market. This prevented large supplies from reaching the fast launches. These measures will be reinforced by new legislation imposing strict controls on the supply, distribution and transportation of tobacco within Gibraltar. In April 1996, further measures were taken under the Imports and Exports Ordinance making it an offence for any person to use a vessel in circumstances which, if they did not occur in Gibraltar, would have constituted an offence had they occurred in Gibraltar. These measures became primary law on 14 October 1996. Since May 1996, the Royal Gibraltar Police and Customs have deployed additional resources to monitor and curtail launch movements in Gibraltar waters.

47. The administering Power further indicates that Gibraltar's legislative framework has been substantially upgraded in other aspects in the fight against drug trafficking. The Drug Trafficking Offences Ordinances was introduced in 1988 and updated in March 1995 to provide for mutual legal assistance to be extended to designated countries. Both the United Nations Vienna Convention and the EU money-laundering directive 91/308 were adopted by the Government of Gibraltar in December 1994. The Government also enacted the Drug Trafficking (money-laundering) Regulations in April 1995, requiring relevant financial businesses to establish systems and training to combat money-laundering. The Gibraltar Criminal Justice Ordinance of 1995, which is in line with the United Kingdom standards, came into effect on 1 January 1996 to combat money-laundering on an all-crimes basis. The effect of these enactments has been to bring Gibraltar fully in line with EU Directives on money-laundering legislation, particularly in embracing the proceeds of all criminal conduct.

48. The report of the administering Power further states that in January 1996, a special unit, the Gibraltar Financial Intelligence Unit, headed by an official from Her Majesty's Customs and Excise, was established in Gibraltar to receive disclosures under the new Gibraltar Criminal Justice Ordinance. The United Kingdom Government funded seminars and published guidelines in Gibraltar in order to create awareness of the legislation. By the end of 1996, the Intelligence Unit had already received 186 disclosures, the majority of which came from banks and exchange bureaux which had been recognized to be particularly vulnerable. The total value of those disclosures is £30 million (average £197,000 per disclosure). Both banks and exchange bureaux complained recently that much less cash circulated in large volume in 1996 than in 1995. The bureaux reported reductions in turnover of between 25 per cent and 50 per cent. The administering Power also indicates that although the Intelligence Unit maintains contact where permissible with similar units in some other jurisdictions, there has so far been little liaison between the Unit and any equivalent organization in Spain. The Gibraltar authorities stand ready to receive and investigate any specific evidence the Spanish authorities may have on money-laundering in Gibraltar. To reinforce Gibraltar's efforts against illicit trafficking and money-laundering, the United Kingdom Government and the territorial Government have recently established the Gibraltar Co-ordinating Centre for Criminal Intelligence and Drugs under an officer seconded from Her Majesty's Customs and Excise. It occupies a central position within all the forces of law and order in Gibraltar and coordinates intelligence of both financial crime and drugs. It also has an important role in assisting in international drugs efforts. Informal cooperation between the territorial police and customs authorities works well and has made a considerable contribution to the fight against trafficking.

49. In a statement to the Foreign Affairs Commission of the Congress of Deputies of Spain, delivered on 4 December 1996, the Minister for Foreign Affairs of Spain said the following:

> "The fight against illicit trafficking continues to be one of our most important objectives. To this end we shall place special emphasis on the invisible aspects of such trafficking: tax evasion, money-laundering, financing of drug-trafficking, engaging in such trafficking and so forth. I am confident that the United Kingdom, in the context of its broad responsibilities for security and public order in the colony, will do its share in this task. The development of an economy based on lawful means, as I have noted, derives in large measure, and should do so

increasingly in the future, from income generated by the Spanish tourist industry. However, much remains to be done. The Spanish Government would like to see concerted action to give transparency to this construct of 50,000 independent companies and their legal advisers. I maintain that, more than a wish, this is an imperative prerequisite for laying a firm foundation for dialogue."

50. According to the administering Power, the United Kingdom and Gibraltar Governments believe that the extensive legislative machinery and cooperation described above are of limited use if the respective Spanish and Gibraltarian legal procedures cannot be coordinated in order successfully to prosecute criminals in the respective jurisdictions. The Gibraltar Government aims at implementing legislation that will facilitate cases of mutual legal assistance early in 1997.

51. The report of the administering Power also indicates that, with the necessary legislative infrastructure now in place, the Gibraltar authorities stand ready to cooperate with their Spanish counterparts to: identify and prosecute those behind illicit trafficking (including illegal immigration) in the region; coordinate the tracking of yacht movements in the Gibraltar area; track the movements and activities of the fast boats and rigid inflatables that have now been banned in Gibraltar; discuss with Spain ways of cooperating to stem the flow of illegal immigrants and substances from Morocco.

V. Consideration by the United Nations

A. Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples

52. The Special Committee considered the question of Gibraltar at its 1458th meeting, on 23 July 1996. The Special Committee heard Mr. Peter Caruana, Chief Minister of Gibraltar (see A/AC.109/SR.1458). The Special Committee acceded to the request of the delegation of Spain to participate in the Committee's consideration of the question of Gibraltar. At the same meeting, the representative of Spain made a statement in which he reiterated the position of his Government on the question of Gibraltar (see also para. 69 below).

53. At its 1458th meeting, the Special Committee decided, without objection, to continue its consideration of the question at its 1997 session, subject to any directives that the General Assembly might give in that connection at its fifty-first session, and, in order to facilitate consideration of the question by the Special Political and Decolonization Committee (Fourth Committee), to transmit the relevant documentation to the Assembly.

B. Special Political and Decolonization Committee (Fourth Committee)

54. The Special Political and Decolonization Committee (Fourth Committee) considered the question of Gibraltar at its 3rd, 4th and 8th meetings, on 7, 9 and 28 October 1996, respectively. At its 3rd meeting, on 7 October, the Committee heard Mr. Peter Caruana, Chief Minister of Gibraltar (see A/C.4/51/SR.3). At the Committee's 4th meeting, on 9 October, the representative of Spain made a statement (A/C.4/51/SR.4; see also para. 68 below). At its 8th meeting, on 28 October, the Committee adopted, without a vote, the draft decision entitled "The Question of Gibraltar" contained in document A/C.4/51/L.5 (see A/C.4/51/PV.8).

C. Action by the General Assembly

55. At its 83rd plenary meeting, on 13 December 1996, the General Assembly, on the recommendation of the Special Political and Decolonization Committee (Fourth Committee), adopted decision 51/430, without a vote, as representing the consensus of the members of the Assembly:

> "The General Assembly, recalling its decision 50/415 of 6 December 1995 and recalling at the same time that the statement agreed to by the Government of Spain and the United Kingdom of Great Britain and Northern Ireland at Brussels on 27 November 1984 stipulates, *inter alia*, the following:
>
> > 'The establishment of a negotiating process aimed at overcoming all the differences between them over Gibraltar and at promoting cooperation on a mutually beneficial basis on economic, cultural, touristic, aviation, military and environmental matters. Both sides accept that the issues of sovereignty will be discussed in that process. The British Government will fully maintain its commitment to honour the wishes of the people of Gibraltar as set out in the preamble of the 1969 Constitution',

Takes note of the fact that, as part of this process, the Ministers for Foreign Affairs of Spain and of the United Kingdom of Great Britain and Northern Ireland hold annual meetings alternately in each capital, the most recent of which took place in London on 20 December 1994, and urges both Governments to continue their negotiations with the object of reaching a definitive solution to the problem of Gibraltar in the light of relevant resolutions of the General Assembly and in the spirit of the Charter of the United Nations."

VI. FUTURE STATUS OF THE TERRITORY

Position of the Administering Power

56. In July 1996, Mr. David Davis, the then United Kingdom Minister of State for Foreign and Commonwealth Affairs, visited Gibraltar and on 1 July made the following statement:

> "Once again, I am delighted to be here to demonstrate Britain's commitment to Gibraltar and the British Government's desire to work closely with the Government of Gibraltar in promoting the interests of this important dependent Territory. Today I have announced a further package of measures designed to support the Government of Gibraltar in working for a secure and prosperous future for Gibraltar. These follow on from and supplement the measures I announced here last November.
>
> "This continues our substantial programme. The measures I have announced are an expression of my confidence in Gibraltar and Gibraltarians, and in the future."

57. According to the administering Power, the measures include:

(a) Further EU structural funds secured by the United Kingdom for Gibraltar totalling about £5.5 million (6.75 million European currency units (ECU)) for the next three years. These funds can be used for business development, tourism, transport infrastructure and human resources;

(b) Further United Kingdom support for the EU legislation unit in Gibraltar, already in its fourth year of operation, and further help in drafting specialist legislation;

(c) Specialist legal draftsman to visit Gibraltar later this month to help with legislation on smuggling;

(d) Continued support for Gibraltar's economic development and planning through:

(i) Appointment of a new insurance supervisor at the Financial Services Commission;

(ii) Appointment of a supervisor of controlled activities;

(iii) Provision of a range of British commercial directories for Gibraltar and ensuring easier access to the Department of Trade and Industry facilities to the United Kingdom to improve the prospects for trade;

(iv) Further cooperation on tourism development;

(e) Expert advice on management of Gibraltar's public finances, including secondment of an official from the National Audit Office to the Gibraltar Government's Audit Department;

(f) Help with the collection and analysis of official statistics;

(g) Help with police and related reorganization and improving coordination and analysis against smuggling and fraud;

(h) Aarrangements announced during the Minister's last visit, in November 1995, on health-care costs have been finalized and will come into effect after formal agreement from the British and Gibraltar Governments. This means that United Kingdom pensioners will benefit from health-care costs from the United Kingdom while in Gibraltar.

58. On 12 February 1997, Mr. David Davis, the then United Kingdom Minister of State for Foreign and Commonwealth Affairs, stated the following:

> "Her Majesty's Government stands by its commitment to the people of Gibraltar, enshrined in the 1969 Constitution. The Government will not enter into arrangements under which the people of Gibraltar would pass under the sovereignty of another State against their freely and democratically expressed wishes. That commitment remains steadfast."

59. On 17 March 1997, Baroness Chalker of Wallasey, the then United Kingdom Minister of State for Foreign and Commonwealth Affairs stated:

> "Our position remains unchanged. We support the right of self-determination, reflecting the wishes of the people concerned and exercised in accordance with the other principles and rights in the Charter of the United Nations, as well as other treaty obligations.

In the case of Gibraltar, as we have stated on many occasions, that includes the Treaty of Utrecht."

60. The then Secretary of State for Foreign and Commonwealth Affairs of the United Kingdom made no reference to the question of Gibraltar in his address to the General Assembly at its fifty-first session. At the 94th plenary meeting of the General Assembly, on 27 March 1997, the representative of the United Kingdom said, *inter alia* (A/51/PV.94):

"... The United Kingdom fully accepts its responsibilities under the Charter of the United Nations as an administering Power."

61. At the 13th plenary meeting of the General Assembly, on 27 September 1996, speaking in the exercise of the right of reply to the statement of the Foreign Minister of Spain (see para. 67 below), the representative of the United Kingdom made the following statement (A/51/PV.13):

"My delegation would like to respond very briefly to certain remarks made by the Foreign Minister of Spain this afternoon concerning Gibraltar.

"My delegation has no wish to engage in open polemic with a friendly ally and partner on an issue which can be resolved only by direct talks, such as have already been agreed between our Governments, in the Brussels Declaration of 1984, to which the Foreign Minister referred. In view of what was said, however, it may be necessary to restate the position of my Government, although it is well known to the Government of Spain.

"British sovereignty over Gibraltar was clearly established in the Treaty of Utrecht. This legal fact is incontrovertible. Furthermore, Britain stands by its commitment to the people of Gibraltar in the preamble to the 1969 Constitution. Her Majesty's Government will not enter into any arrangements under which the people of Gibraltar would pass under the sovereignty of another State against their freely and democratically expressed wishes.

"We do not consider that the notion of territorial integrity is at all relevant in this case. I am sure that our Spanish colleague, who exercised his own right of reply last Monday night, understands this position.

"There are many issues left over from history which are better resolved by cooperation than by assertions of sovereignty. Nonetheless, we recognize that Spain is Gibraltar's immediate neighbour and we attach importance to continuing dialogue with Spain as a means of overcoming our existing differences.

"It is in that framework that my Government and the Government of Gibraltar have been engaged with the Government of Spain in talks to improve cooperation on issues such as drug smuggling in the area and to enable the communities on both sides of the frontier to benefit from free economic relations within the framework of the European communities."

62. On 9 October 1996, in a statement to the Special Political and Decolonization Committee (Fourth Committee) (see A/C.4/51/SR.4), the representative of the United Kingdom said that the British record on decolonization was good. The representative said that the United Kingdom continued to take very seriously its obligations under the Charter of the United Nations to develop self-government in its dependent Territories. Within the constraints of treaty obligations, it remained firmly committed to ensuring, in cooperation with the locally elected Governments, that their constitutional frameworks continued to meet the interests of their peoples. Each Territory held regular and free elections.

Position of the territorial Government

63. In a statement made on 29 January 1997 in Brussels, Mr. Peter Caruana, Chief Minister of Gibraltar, *inter alia*, said:

"... The people of Gibraltar seek recognition of the right to self-determination as established by the Charter of the United Nations, numerous resolutions of the United Nations... Self-determination means that the people of Gibraltar can determine their own future free of external imposition or interference... Gibraltar is not engaged in a quest for sovereign independence. We seek to maintain our political ties with the United Kingdom... Gibraltar and its citizens want to participate in the new Europe of the future, the Europe of Maastricht... The Government of Gibraltar wants to seek good neighbourly relations and mutual cooperation with Spain... We therefore seek a process of dialogue with Spain in which Gibraltar can be present in its own right with its own voice..."

64. In a statement delivered at the swearing in ceremony of the Governor of Gibraltar, on 24 February 1997, the Chief Minister of the Territory said, *inter alia*, the following:

"... One of the things that unites all Gibraltarians is our commitment and conviction to the view that we have an inalienable right to self-determination. That is, the right to decide our own political future, free from external imposition of any kind and from any quarter. The other expression of political repositioning is our

desire to achieve decolonization, to shed our colonial status through a process of constitutional modernization which, while preserving a status of political dependency with the United Kingdom, will give us a modern non-colonial status, something along the lines of the Isle of Man or the Channel Islands. The Government is committed to the early pursuit of such constitutional modernization during the remainder of this term of office. The Government of Gibraltar seeks good, neighbourly, European relations with Spain. To that end we ... seek to engage Spain in a process of a dialogue, to enhance cooperation and to improve the traditionally hostile relationship between the Government of Spain and Gibraltar. However, it must be dialogue in which the people of Gibraltar have a voice of their own and in which we can participate with complete safety on the question of sovereignty. Needless to say, Gibraltar is not willing to participate in a process in which we are expected to trade sovereignty or sovereignty concessions for normal, civilized, European relations and cooperation. Gibraltar will never go down that route, whatever the carrot, whatever the stick. Nor is Gibraltar willing to forego the assertion and pursuit of our international legal and political rights. Accordingly we will continue to pursue the quest for international recognition of our right to self-determination in the United Nations and elsewhere and we will continue, as we have so successfully started to do recently, to take our legitimate EU grievances and aspirations straight to the heart of Europe. We are determined to do everything in our power to prevent Spain from getting away with seeking to deny us the rights and privileges which go with our status as an integral part of the European Union. Gibraltar is entitled to occupy the moral high ground in these matters and we are determined that it will do so. Gibraltar is entitled to have its political and legal rights respected and we are determined that they should be. In all these vital matters, we do of course rely on and expect full and effective support from Her Majesty's Government. It is therefore a matter of great satisfaction that Her Majesty's Permanent Representative to the European Union, Sir Stephan Wall, and all his staff should have so fully and helpfully supported the Gibraltar Government's recent visit to European Union institutions in Brussels ..."

Position of the Government of Spain

65. On 27 November 1996, the Minister for Foreign Affairs of Spain, in reply to a parliamentary question from the Senator for Cadiz, stated, *inter alia*, the following:

> "... There are two parties who take decisions regarding the sovereignty of the territory, and they are the colonial Power, the United Kingdom, and Spain. On some occasions, as in the case of Joshua Hassan, the Gibraltarian side formed part of the British delegation. On this occasion it appears that Mr. Caruana, representing the local Government of Gibraltar, has found it difficult to be part of the British delegation. It is unfortunate that we were unable to learn the views of the local Government of Gibraltar and I believe it is also unfortunate that the party that demanded greater cooperation and understanding on the part of the Spanish authorities could not be here to listen in person but must do so through intermediaries to what the Spanish Government and Minister for Foreign Affairs think about how to raise living standards in the region, how to improve infrastructures and how to draw up a framework that offers stability and prosperity to Gibraltarians in the future. It is my understanding, then, that this decision, which we regret, has an adverse effect first and foremost on Gibraltarians; it is logical, however, that Spain should reject any change in the traditional format and the entry of a third voice, a third faction, a third party into the process. I believe it is possible that in the future he may reconsider his position and do as his predecessors did, participating in the meetings, as has always been done in the past, as a member of the British delegation. This is, of course, something Mr. Caruana and the local Gibraltarian authorities will have to decide for themselves."

66. In a statement in Parliament on 4 December 1996, the Minister for Foreign Affairs said the following:

> "Twelve years after the Brussels process began, on 27 November to be exact, the issues of sovereignty have yet to be addressed, whereas the issue of cooperation, which was to have been dealt with in parallel with the discussions on sovereignty, has moved ahead spectacularly in a very short time. In addition, this cooperation has not been mutually beneficial, but has served to place the colony in an unimaginable position of economic and general well-being, much less now that transfers to the garrison have been reduced."

67. The Foreign Minister of Spain in his address to the General Assembly at its fifty-first session, on 27 September 1997, *inter alia*, said (A/51/PV.13):

> "... One of priority objectives of the Spanish Government is the decolonization of Gibraltar. Through its resolutions, the General Assembly pointed the way to a decolonization process which, based on the principle of territorial integrity, should be carried out through bilateral negotiations between the United Kingdom, the colony's administrative Power, and Spain, the State in whose territory the colony is located. The Spanish Government will carry out with the greatest flexibility, but also the greatest firmness, the future bilateral negotiations with the United Kingdom on the basis of the Brussels Declaration of November 1984, with the clear aim of moving forward in the process to culminate in the restoration of Spain's full territorial integrity, generously safeguarding the interests of the colony's population and convinced of the urgent need to bring an end to the anachronism of the existence of a colony of one European Union member State in the territory of another friendly and allied member State."

68. At the fourth meeting of the Special Political and Decolonization Committee (Fourth Committee), on 9 October 1996, the representative of Spain said that his Government's position on the question of Gibraltar had not changed. It was well known to members of the Committee and had been reflected in the statement made by the Minister for Foreign Affairs of Spain during the general debate and in his own statement to the Special Committee on Decolonization. In his statement, the Chief Minister had spoken of the wish of the people of Gibraltar to take part in the negotiating process and had pointed out that only the two sovereign States, Spain and the United Kingdom, were participating in the negotiations. The issue was how best to include the people of Gibraltar in such a framework. A reasonable formula had been elaborated in Brussels whereby the people of Gibraltar have been allowed to attend the talks and take part in them. However, the representative of Spain said, since Gibraltar could not be regarded as a sovereign State, its people could hardly discuss issues which were not within their sphere of competence. He continued that it was therefore necessary to reiterate that the local authorities in Gibraltar had excluded themselves from the negotiating process by attempting to impose on Spain elements of a political nature which lay outside their powers. Spain, however, felt a deep respect for the people of Gibraltar and it hoped that they would be able to join in the negotiating process at the earliest possible opportunity.

69. At the 1458th meeting of the Special Political and Decolonization Committee, on 23 July 1996, the representative of Spain recalled that the decolonization of Gibraltar was a priority for his country. The people and the various political movements of Spain wished to restore the country's territorial integrity, and the United Nations had, in a number of resolutions, established that the decolonization of the Territory should take place in accordance with the principle of territorial integrity. ... The representative of Spain recalled that General Assembly resolution 2625 (XXV) reaffirmed that any breach of the territorial integrity of States was incompatible with the purposes and principles of the Charter of the United Nations. He also recalled that resolution 2353 (XXII) on the question of Gibraltar stated that any colonial situation which partially or completely destroyed the national unity and territorial integrity of a country was incompatible with the purposes and principles of the Charter of the United Nations and that resolution 2429 (XXIII) reaffirmed that the continuation of the colonial situation in Gibraltar was incompatible with the purposes and principles of the Charter. The representative of Spain said that, in accordance with the wishes of the General Assembly, the Governments of Spain and the United Kingdom had agreed, by the 1984 Brussels Declaration, to begin negotiations in 1985, and that those negotiations had continued since that time. The Gibraltarians had participated in them within the framework of the British delegation until 1988, when they had decided to withdraw; that had been a regrettable decision and the local authorities should reconsider it. The representative said that Spain had no intention of harming the people of Gibraltar, and would take their interests and their autonomous institutions into account. The Government was prepared to guarantee all those aspects in the context of a negotiated settlement. Dialogue must go ahead, with the participation of the Gibraltarian authorities. However, the Spanish Government had reservations concerning certain petitions and statements that had been made at the current meeting and it reserved the right to make a further statement on the subject at the appropriate time.

Anglo-Spanish negotiations

70. The negotiating process established by the Brussels joint communiqué of 27 November 1984 continued during the period under review. One formal meeting was held at the level of Foreign Minister, in Madrid on 22 January 1997.

71. Upon conclusion of that meeting, the then United Kingdom Foreign Secretary stated the following:

> "Thank you very much indeed. Could I echo what Abel Matutues has said. I am delighted to be in

Madrid and it is important that good friends and good allies like Spain and the United Kingdom should meet in this way to discuss matters of common interest, and particularly when there are historic problems and difficulties, then the proper way to address them is through dialogue and discussion and we very much welcome this opportunity.

"As you have heard, we have covered a wide range of issues relevant to Gibraltar and to the relationship of Gibraltar with Spain and the United Kingdom, in the context of European Union membership. And we have addressed the various ways in which it ought to be possible to take forward cooperation and to achieve benefits in the interests of all concerned.

"We of course have raised and discussed some of the issues that have been prominent in recent weeks. There has been the important question of Gibraltarian passports and rights of people from Gibraltar to travel in Spain, and there has been very important clarification with regard to that which I have been happy to welcome.

"We, I think, have both found this to be a very valuable opportunity to understand each other's point of view and to identify the priorities for future cooperation and progress. And, like my colleague and friend, I am happy now to respond to questions."

72. In a press conference held on 22 February 1997, the Minister for Foreign Affairs of Spain, *inter alia*, said the following:

"We have in fact spoken of illicit trafficking and of the need to act more effectively. What is clear is that there are two kinds of illicit trafficking, that which is visible, for example, the fast boats, which traditionally have been involved in tobacco smuggling and in recent years have branched out, dangerously, into drug smuggling, including hard drugs in some cases, and we have noted that, thanks to the vigorous measures taken by the British Government and supported by action at the local level, significant progress has been made in prosecuting these visible forms of trafficking. But this is only part of the problem. Spain continues to face a very, very serious problem with the so-called invisible kind of illicit trafficking: Gibraltar's existing financial system, which is an opaque system and does not furnish the requisite information to the National Commission of the Stock Market. There are some 50,000 companies in Gibraltar where, in some cases, as in the case of those named 'Bajamar', and others, transactions involving amounts approaching 30 billion pesetas of laundered money from illegal operations, in particular from drug trafficking, were uncovered last December. Spain continues to demand more energetic action in this area, although I wish to express some satisfaction, in that Mr. Rifkind and the British Governor of Gibraltar have announced a plan to correct the opaqueness of the Gibraltar financial system To this end they intend in the coming months to implement a plan which, for our part, we would like to see implemented as quickly as possible to genuinely make Gibraltar a financial centre complying with all relevant financial regulations in existence in Europe. These developments thus offer an indication that the talks, although they will probably extend over a lengthy period, are positive for both parties."

73. Issues relating to Gibraltar were also discussed at a meeting between British and Spanish officials in December 1996.

Anglo-Gibraltarian discussions

74. During the period under review, there were regular meetings and discussions between the United Kingdom and Gibraltarian ministers and officials. On 12 February 1996, Mr. David Davis, the then Minister of State for Foreign and Commonwealth Affairs, stated that:

"My right honourable and learned friend the Foreign Secretary regularly meets the Chief Minister of Gibraltar to discuss matters concerning Gibraltar's future. The last such meeting was in London on 18 November. He also met the Spanish Foreign Minister in Madrid on 22 January under the Brussels process to explore the scope for enhanced cooperation between Gibraltar and Spain."

Airport agreement

75. As previously reported, according to the administering Power and subject to the necessary legislation being put in place, the United Kingdom and Spain agreed to the development of the Gibraltar Airport jointly coordinated by the British and Spanish authorities. The British Government had made clear at the time that they would not impose it on Gibraltar if the latter did not wish to implement it (see also A/AC.109/1007, paras. 22 and 23; A/AC.109/1074 and Corr.1, paras. 17-23; A/AC.109/1195, paras. 33-35 and A/AC.109/2057, para. 65). In 1997, Lord Chesham, responding to a question posed in the House of Lords

regarding the Gibraltar Airport Agreement, made the following statement:

> "... The 1987 Joint Declaration concerning the Gibraltar Airport agreement has not been updated. We are prepared to listen to any ideas from the Government of Gibraltar concerning the development of the airport. Any practicable solution to which all parties could agree would be welcome. This would open the way for the EU aviation liberalization measures to apply to Gibraltar.
>
> "... We are hopeful that an airport agreement can be concluded. It is a difficult and unusual situation in that it takes three to tango. There is no need to terminate the agreement. We have already said that we will not impose it on Gibraltar unless Gibraltar is perfectly happy that it should come into place.
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> "... The Spanish Government insists that the existing declaration should be implemented before it can be amended. That will not be imposed on Gibraltar. Gibraltar does not want it and therefore it will not take place.
>
> "... The existing declaration which covers joint control will not be imposed on Gibraltar but Spain is insisting that it is first implemented. Therefore, by inference, it continues to insist on joint control.
>
> "... It would be of great economic value to Gibraltar if the airport could be freed up and we would definitely welcome any proposals which would make that effective."

76. The Minister for Foreign Affairs of Spain, in a meeting of the Foreign Affairs Commission of the Congress of Deputies, on 4 December 1996, made the following statement:

> "Spain, logically, is requesting the United Kingdom to implement the 1987 agreement on the joint use of Gibraltar airport, which the local authorities have rejected. This is unacceptable to Spain, and, once again, those who have been hurt most by it are the Gibraltarians. Let us not forget that this airport was built not on Gibraltarian territory ceded to the United Kingdom under the Treaty of Utrecht, but on the Isthmus, taking advantage of certain circumstances, and thus constitutes illegally occupied territory. While Spain believed that this agreement on joint use would be good for the whole region by promoting such cooperation, and therefore signed it and called upon the British Government to do its part, what Spain cannot accept, naturally, is the purely commercial approach taken to the matter by the local authorities which is prejudicial to their right to the territory; accordingly, it calls for the agreement to be implemented as signed and not on the basis of any 'light' readings. So long as the agreement goes unimplemented, Spain will continue to demand such use and will continue to consider it unfortunate both for Gibraltar and for all neighbours in the zone."

Notes

[1] Information contained in the present working paper has been derived from information transmitted to the Secretary-General by the Government of the United Kingdom of Great Britain and Northern Ireland under Article 73*e* of the Charter of the United Nations, on 18 March 1997, as well as from the official documents of the Government of Spain.